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# State v. Jorgensen Appellant's Reply Brief Dckt. 40338

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 40338
	)	
v.	)	BONNEVILLE COUNTY
	)	NO. CR 2005-8124
STACE VANCE JORGENSEN,	)	
	)	REPLY BRIEF
Defendant-Appellant.	)	

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REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF BONNEVILLE

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HONORABLE JON J. SHINDURLING  
District Judge

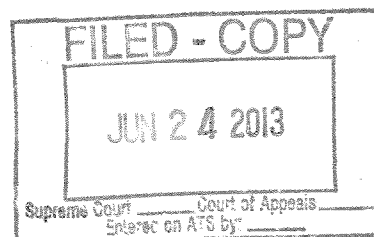
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SARA B. THOMAS  
State Appellate Public Defender  
State of Idaho  
I.S.B. #5867

ERIK R. LEHTINEN  
Chief, Appellate Unit  
I.S.B. #6247

BRIAN R. DICKSON  
Deputy State Appellate Public Defender  
I.S.B. #8701  
3050 N. Lake Harbor Lane, Suite 100  
Boise, ID 83703  
(208) 334-2712

KENNETH K. JORGENSEN  
Deputy Attorney General  
Criminal Law Division  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534



ATTORNEYS FOR  
DEFENDANT-APPELLANT

ATTORNEY FOR  
PLAINTIFF-RESPONDENT

## TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE .....	1
Nature of the Case .....	1
Statement of the Facts and Course of Proceedings .....	1
ISSUES PRESENTED ON APPEAL .....	2
ARGUMENT .....	3
I. The Idaho Supreme Court Denied Mr. Jorgensen Due Process And Equal Protection When It Denied His Motion To Augment The Record With Transcripts Necessary For Review Of The Issues On Appeal.....	3
A. Introduction.....	3
B. In The Event This Case Is Assigned To The Court Of Appeals, The Court Has The Authority To Address The Issues Raised In The Appellant's Brief .....	4
1. The Idaho Rules Of Appellate Procedure Require The Idaho Court Of Appeals To Address The Issues Raised In Mr. Jorgensen's Appeal .....	4
2. An Assignment Of This Case to An Appellate Tribunal With No Authority To Address Mr. Jorgensen's Claims Of Error Will Violate His Right To Procedural Due Process On Appeal .....	7
C. The Remainder Of The State's Arguments Are Unremarkable .....	9
II. The District Court Abused Its Discretion When It Revoked Mr. Jorgensen's Probation, Or, Alternatively, By Not Reducing His Sentence <i>Sua Sponte</i> When It Did So.....	9
CONCLUSION.....	9
CERTIFICATE OF MAILING .....	10

## **TABLE OF AUTHORITIES**

### **Cases**

<i>Griffin v. Illinois</i> 351 U.S. 12 (1956) .....	8
<i>Maresh v. State</i> , 132 Idaho 221 (1998) .....	8
<i>Smith v. Idaho Dept. of Correction</i> , 128 Idaho 768 (1996).....	8
<i>State v. Card</i> , 121 Idaho 425 (1991) .....	7
<i>State v. Morgan</i> , 153 Idaho 618 (Ct. App. 2012) .....	4, 6
<i>State v. Thomas</i> , 146 Idaho 592 (2008) .....	8
<i>State v. Wood</i> , 132 Idaho 88 (1998).....	7

### **Constitutional Provisions**

ID. CONST. art. I §13.....	7
U.S. CONST. amend. XIV.....	7

### **Rules**

I.A.R. 108.....	4
I.A.R. 110.....	6
I.A.R. 30.....	6
I.A.R.11(c)(9) .....	8
I.R.S.C. 21 .....	5

### **Statutes**

I.C. § 19-2801.....	8
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## STATEMENT OF THE CASE

### Nature of the Case

Stace Jorgensen appeals, asserting that the district court abused its discretion when it revoked his probation, or, alternatively, by not reducing his sentence *sua sponte*, when it did so. As part of his appeal, he requested the production of various transcripts, but the Idaho Supreme Court denied his motion to augment the appellate record with those transcripts. Mr. Jorgensen contends this constitutes a violation of his state and federal constitutional rights to due process and equal protection. As a result, this Court should grant Mr. Jorgensen access to the requested transcripts and allow him the opportunity to file supplemental briefing raising any issues arising from review of those transcripts. In the event that request is denied, this Court should vacate the district court's order revoking his probation and executing his sentence and remand this case for a new disposition hearing. Alternatively, it should reduce Mr. Jorgensen's sentence as it deems appropriate.

### Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Jorgensen's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

## ISSUES

1. Whether the Idaho Supreme Court denied Mr. Jorgensen due process and equal protection when it denied his motion to augment the record with transcripts necessary for review of the issues on appeal.
2. Whether the district court abused its discretion when it revoked Mr. Jorgensen's probation, or, alternatively, by not reducing his sentence *sua sponte* when it did so.

## ARGUMENT

### I.

#### The Idaho Supreme Court Denied Mr. Jorgensen Due Process And Equal Protection When It Denied His Motion To Augment The Record With Transcripts Necessary For Review Of The Issues On Appeal

##### A. Introduction

In Idaho, district courts consider a broad range of information when making sentencing decisions. Due to this broad range of information considered, Idaho appellate courts have scrupulously required defendants to provide an extensive appellate record because they conduct an independent review of the entire record before the district court when determining whether an abuse of discretion occurred in regard to a sentencing determination. In other words, the question on appeal generally does not focus on how or what the district court actually considered. Instead, the central question is whether the record before the district court supports its sentencing determination.

Since Idaho appellate courts need to have all of the relevant information that was before the district court to conduct this analysis, they will presume that any missing information supports the trial court's determination and refuse to rule on the merits of the issue. In some instances, the Court of Appeals has refused to address the merits of issues on appeal due to the appellants' failure to provide transcripts of hearings which were never discussed by the district court and occurred years before the disposition of the issue on appeal. As such, the fact that Mr. Jorgensen is being denied access to the transcripts necessary to complete this appellate review violates his constitutional rights.

B. In The Event This Case Is Assigned To The Court Of Appeals, The Court Has The Authority To Address The Issues Raised In The Appellant's Brief

1. The Idaho Rules Of Appellate Procedure Require The Idaho Court Of Appeals To Address The Issues Raised In Mr. Jorgensen's Appeal

In his Appellant's Brief, Mr. Jorgensen argued, for the first time in this appeal, that the denial of his request for the transcripts violated the Fourteenth Amendment's due process and equal protections clauses. (Appellant's Brief, pp.6-22.) In *State v. Morgan*, 153 Idaho 618 (Ct. App. 2012), the Court of Appeals held that it did not have the authority to address a substantially similar due process argument because it would be tantamount to entertaining an appeal from the Supreme Court. Contrary to *Morgan*, I.A.R. 108 requires the Court of Appeals to rule on the merits of all cases to which it is assigned by the Supreme Court:

Cases Reserved to Supreme Court. *The Court of Appeals shall hear and decide all cases assigned to it by the Supreme Court*; provided that the Supreme Court will not assign the following cases:

- (1) Proceedings invoking the original jurisdiction of the Idaho Supreme Court;
- (2) Appeals from imposition of sentences of capital punishment in criminal cases;
- (3) Appeals from the Industrial Commission;
- (4) Appeals from the Public Utilities Commission;
- (5) Review of the recommendatory orders of the Board of Commissioners of the Idaho State Bar;
- (6) Review of recommendatory orders of the Judicial Council.

I.A.R. 108 (emphasis added). Since the issues raised in his Appellant's Brief do not fall into any of the foregoing categories, the Court of Appeals would have the authority,



contrary to the State's assertion (*see* Resp. Br., p.4), to address the issues raised in his Appellant's Brief.

Furthermore, by assigning this case to the Court of Appeals, the Idaho Supreme Court would implicitly grant the Court of Appeals to review Mr. Jorgensen's claims about the constitutionality of the merits of its decision to deny his request for the transcripts. The Supreme Court will be aware of Mr. Jorgensen's due process issue when it makes its decision to either keep this appeal or assign it to the Court of Appeals. Notably, the Internal Rules of the Supreme Court (I.R.C.S.) provide:

Assignment of Cases. The chief justice (or designee) shall make the tentative assignment of cases as between the Supreme Court and the Court of Appeals. Copies of each assignment sheet shall be given to the justices, affording each an opportunity to object and request the Court to reconsider the assignment.

...

Any objection to the assignment shall be stated, with reasons, in writing and circulated to all the justices.

...

At the request of any justice, the objection to the assignment shall be taken up at conference.

I.R.S.C. 21. The assignment of cases is not an arbitrary process; according to the rule, it is a deliberate process which affords all the justices the ability to object and provide input into the decision to assign a case to the Court of Appeals. Therefore, the Supreme Court will be aware of Mr. Jorgensen's due process and equal protection arguments when it makes the decision to either keep this case or assign this case to the Court of Appeals. In the event this case is assigned to the Court of Appeals, the Supreme Court will be implicitly granting the court authority to address the merits of Mr. Jorgensen's claims of error.

Additionally, the *Morgan* Court indicated that defendants in this situation whose cases are assigned to the Court of Appeals should file a renewed motion to augment the record with the Court of Appeals. *Morgan*, 153 Idaho at 621-622. This assertion is without merit because the Idaho Appellate Rules require all motions to be filed with the Idaho Supreme Court. For example:

*All motions, petitions, briefs and other appellate documents, other than the initial notice of appeal, shall be filed with the Clerk of the Supreme Court as required by the Idaho Appellate Rules with the court heading of the Supreme Court of the State of Idaho as provided by Rule 6. There shall be no separate filings directed to or filed with the Court of Appeals.* In the event of an assignment of a case to the Court of Appeals, the title of the proceeding and the identifying number thereof shall not be changed except that the Clerk of the Supreme Court may add additional letters or other notations to the case number so as to identify the assignment of the case. All case files shall be maintained in the office of the Clerk of the Supreme Court.

I.A.R. 110 (emphasis added). Furthermore:

Any party may move the *Supreme Court* to augment or delete from the settled reporter's transcript or clerk's or agency's record.

...

Unless otherwise expressly ordered by the *Supreme Court* such motion shall be determined without oral argument. The reporter's transcript and clerk's or agency's record may also be augmented or portions deleted by stipulation of the parties and *order of the Supreme Court*.

I.A.R. 30 (emphasis added). Mr. Jorgensen is not aware of any court rule which allows a party to an appeal to file a motion directly with the Court of Appeals. Idaho Appellate Rule 110 expressly prohibits such filings. Therefore, the State's contention that Mr. Jorgensen could have filed a renewed motion to augment directly with the Court of Appeals (see Resp. Br., p.4) is contrary to the Idaho Appellate Rules.

In sum, when the Idaho Supreme Court assigns an appeal to the Idaho Court of Appeals, the Idaho Appellate Rules require the Court of Appeals to decide all issues addressed in that appeal. Even though Mr. Jorgensen is challenging the constitutionality of the Supreme Court's decision to deny his request for the transcripts, an assignment of this case to the Court of Appeals functions as an implicit grant of authority from the Idaho Supreme Court to review all issues raised in the Appellant's Brief.

2. An Assignment Of This Case to An Appellate Tribunal With No Authority To Address Mr. Jorgensen's Claims Of Error Will Violate His Right To Procedural Due Process On Appeal

In the event the Idaho Supreme Court assigns this case to the Court of Appeals but it determines that the Court of Appeals does not have the authority to address all of the issues Mr. Jorgensen raised in his Appellant's Brief, that will function as a separate denial of his federal due process rights, which guarantee him a fair appeal. The Constitutions of both United States and the State of Idaho guarantee a criminal defendant due process of law. See U.S. CONST. amend. XIV; ID. CONST. art. I §13.

It is firmly established that due process requires notice and a meaningful opportunity to be heard. *Armstrong v. Manzo*, 380 U.S. 545 (1965); *Cole v. Arkansas*, 333 U.S. 196 (1948). The Due Process Clause of the Fourteenth Amendment also protects against arbitrary and capricious acts of the government. *Godfrey v. Georgia*, 446 U.S. 420 (1980). Due process requires that judicial proceedings be "fundamentally fair." *Lassiter v. Department of Soc. Serv. of Durham Cty.*, 452 U.S. 18, 24 (1981).

*State v. Card*, 121 Idaho 425, 445 (1991) (overruled on other grounds by *State v. Wood*, 132 Idaho 88 (1998)). Additionally, the Idaho Supreme Court has "applied the United States Supreme Court's standard for interpreting the due process clause of the United

States Constitution to art. I, Section 13 of the Idaho Constitution.” *Maresh v. State*, 132 Idaho 221, 227 (1998) (citing *Smith v. Idaho Dept. of Correction*, 128 Idaho 768, 771 (1996)).

While there is no federal guarantee to an appeal from criminal state court proceedings, once a state decides to provide appellate review, the due process and equal protection clauses of the Fourteenth Amendment apply to the entirety of the appellate proceedings. *Griffin v. Illinois* 351 U.S. 12, 18 (1956). In Idaho, a criminal defendant’s right to appeal is created by statute. See I.C. § 19-2801. Defendants have the right to appeal from judgments affecting their substantial rights. *State v. Thomas*, 146 Idaho 592, 594 (2008); I.A.R.11(c)(9). The decision to relinquish jurisdiction is such an order.

In this case, Mr. Jorgensen argues that due process protections apply to every stage of his appeal, and thus, apply to any appellate procedural decision made by the Idaho Supreme Court. Even though Mr. Jorgensen does not have an independent right to appeal from the order denying his motion to augment, he can challenge the constitutionality of the order because it is a procedural component of his appeal and the Fourteenth Amendment’s due process clause applies to all procedures affecting his appeal. If the Idaho Supreme Court assigns this appeal to the Idaho Court of Appeals knowing that the Court of Appeals had no authority to reverse an order of the Supreme Court, a unique and independent procedural due process violation will occur because the Supreme Court will have precluded Mr. Jorgensen from any state procedure by which he could raise his federal constitutional claims challenging the denial of his motion to augment.

C. The Remainder Of The State's Arguments Are Unremarkable

The remainder of the State's arguments in regard to the deprivation of an adequate appellate record are unremarkable, and as such, no further reply is necessary. Accordingly, Mr. Jorgensen simply refers the Court back to pages 6-22 of his Appellant's Brief.

II.

The District Court Abused Its Discretion When It Revoked Mr. Jorgensen's Probation, Or, Alternatively, By Not Reducing His Sentence *Sua Sponte* When It Did So

Because the State's arguments concerning the decision to relinquish jurisdiction over Mr. Jorgensen and to impose his sentence without modification are not remarkable, no further reply is necessary. Accordingly, Mr. Jorgensen simply refers the Court back to pages 22-26 of his Appellant's Brief.

CONCLUSION

Mr. Jorgensen respectfully requests access to the requested transcripts and the opportunity to provide any necessary supplemental briefing raising issues which arise as a result of that review. In the event this request is denied, Mr. Jorgensen respectfully requests this Court vacate the order revoking his probation and executing his sentence and remand this case for a new disposition hearing. Alternatively, he respectfully requests this Court reduce his sentence as it deems appropriate.

DATED this 24<sup>th</sup> day of June, 2013.

  
\_\_\_\_\_  
BRIAN R. DICKSON  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24<sup>th</sup> day of June, 2013, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

STACE VANCE JORGENSEN  
INMATE #81474  
SICI  
PO BOX 8509  
BOISE ID 83707

JON J SHINDURLING  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

JAMES H BARRETT JR  
BONNEVILLE COUNTY PUBLIC DEFENDERS  
E-MAILED BRIEF

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
P.O. BOX 83720  
BOISE, ID 83720-0010

Hand delivered to Attorney General's mailbox at Supreme Court.

  
\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

BRD/eas